

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH BAYARDO, JR., an individual and successor-in-interest of Joseph Bayardo, deceased, FRANCISCO BAYARDO an individual, and NANCY MITRE, an individual

CASE NO.: CV 23-9366-MEMF-BFM
Hon. Judge Maame Ewusi-Mensah
Frimpong,
Crtrm., 8B
Magistrate Judge Brianna Fuller Mircheff,
Crtrm. 780

Plaintiff(s).

V.

CITY OF LOS ANGELES; CAPTAIN
ALEJANDRO VARGAS, and
UNIDENTIFIED LAPD OFFICERS.

Defendant(s).

STIPULATED PROTECTIVE ORDER

1. GENERAL

1.1 Purposes and Limitations. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or

1 responses to discovery and that the protection it affords from public disclosure and use
2 extends only to the limited information or items that are entitled to confidential
3 treatment under the applicable legal principles. The parties further acknowledge, as set
4 forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them
5 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
6 procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the court to file material under seal.

8 1.2 Good Cause Statement.

9 This action involves the City of Los Angeles (“the City”) and members of the
10 City’s Los Angeles Police Department (“LAPD”). The nature of the incident gives rise
11 to Plaintiffs’ suit and Plaintiff’s claims and allegations, will result in discovery
12 production that includes: police reports and evidence investigation reports and evidence;
13 peace officer personnel materials, information implicating privacy rights of third party
14 individuals (i.e. bystander witnesses, emergency personnel information); and other
15 private and confidential materials for which require special protection from public
16 disclosure.

17 Specifically, Plaintiffs are seeking material and information that Defendant City
18 (collectively, “Defendant”) maintains as confidential such as personnel files of the
19 police and/or sworn officers involved in the incident, Internal Affairs materials and
20 information, video recordings, audio recordings, photographs, Force Investigation
21 Division materials and information and other administrative materials and information
22 currently in the possession of Defendant and which Defendant believes need special
23 protection from public disclosure and from use for any purpose other than prosecuting
24 this litigation. Plaintiffs may also seek official information contained in the personnel
25 files of the police and/or sworn officers involved in the subject incident, which
26 Defendant maintains as strictly confidential and which Defendant believes need
27 special protection from public disclosure and from use for any purpose other than
28 prosecuting this litigation.

1 Defendant asserts that the confidentiality of the materials and information
2 sought by Plaintiffs is recognized by California and federal law, as evidenced *inter alia*
3 by California *Penal Code* section 832.7 and *Kerr v. United States Dist. Ct. for N.D.*
4 *Cal.*, 511 F.2d 192, 198 (9th Cir. 1975), aff'd, 426 U.S. 394 (1976). Defendant has not
5 publicly released the materials and information referenced above except under
6 protective order or pursuant to a court order, if at all. The personnel materials and
7 information are of the type that has been used to initiate disciplinary action against the
8 City's respective employees, and has been used as evidence in disciplinary
9 proceedings, where the employee conduct was considered to be contrary to policy.

10 Defendant contends that absent a protective order delineating the
11 responsibilities of nondisclosure on the part of the parties hereto, there is a specific
12 risk of unnecessary and undue disclosure by one or more of the many attorneys,
13 secretaries, law clerks, paralegals and expert witnesses involved in this case, as well as
14 the corollary risk of embarrassment, harassment and professional and legal harm on
15 the part of the City's employees referenced in the materials and information.

16 Defendant also contends that the unfettered disclosure of the materials and
17 information, absent a protective order, would allow the media to share this information
18 with potential jurors in the area, impacting the rights of Defendant herein to receive a
19 fair trial.

20 Accordingly, to expedite the flow of information, to facilitate the prompt
21 resolution of disputes over confidentiality of discovery materials, to adequately protect
22 information the parties are entitled to keep confidential, to ensure that the parties are
23 permitted reasonable necessary uses of such material in preparation for and in the
24 conduct of trial, to address their handling at the end of the litigation, and serve the
25 ends of justice, a protective order for such information is justified in this matter. It is
26 the intent of the parties that information will not be designated as confidential for
27 tactical reasons and that nothing be so designated without a good faith belief that it has
28

1 been maintained in a confidential, non-public manner, and there is good cause why it
2 should not be part of the public record of this case.

3 Plaintiffs agree that there is Good Cause for a Protective Order so as to preserve
4 the respective interests of the parties while stream lining the process of resolving any
5 disagreements. The parties therefore stipulate that there is Good Cause for, and
6 hereby jointly request that the honorable Court issue a Protective Order regarding
7 confidential documents consistent with the terms and provisions of this Stipulation.
8 However, the entry of a Protective Order by the Court pursuant to this Stipulation shall
9 not be construed as any ruling by the Court on the aforementioned legal statements or
10 privilege claims in this section, no shall this section be construed as part of any such
11 Court Order.

12 In

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14 2. DEFINITIONS

15 2.1 Action: JOSEPH BAYARDO, JR., et al. v. City of Los Angeles, et al.
16 USCD Case No. 2:23-cv-09366-MEMF-BFM [

17 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
20 it is generated, stored or maintained) or tangible things that qualify for protection under
21 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
22 Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
24 support staff).

25 2.5 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party, including support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3

4 **3. SCOPE**

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also (1) any information copied or extracted from
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
8 Material; and (3) any testimony, conversations, or presentations by Parties or their
9 Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial shall be governed by the orders of the trial
11 judge. This Order does not govern the use of Protected Material at trial.

12

13 **4. DURATION**

14 Once a case proceeds to trial, all of the court-filed information to be introduced
15 that was previously designated as confidential or maintained pursuant to this protective
16 order becomes public and will be presumptively available to all members of the public,
17 including the press, unless compelling reasons supported by specific factual findings to
18 proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v.
19 City and Cty. of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
20 “good cause” showing for sealing documents produced in discovery from “compelling
21 reasons” standard when merits-related documents are part of court record).
22 Accordingly, the terms of this protective order do not extend beyond the
23 commencement of the trial.

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order will remain in effect until a Designating Party agrees otherwise
26 in writing or a court order otherwise directs. Final disposition is the later of (1)
27 dismissal of all claims and defenses in this Action, with or without prejudice, or (2) final
28 judgment after the completion and exhaustion of all appeals, rehearings, remands, trials,

1 or reviews of this Action, including the time limits for filing any motions or applications
2 for extension of time under applicable law.

3

4 5. **DESIGNATING PROTECTED MATERIAL**

5 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

6 Each Party or Non-Party that designates information or items for protection under this
7 Order must take care to limit any such designation to specific material that qualifies
8 under the appropriate standards. The Designating Party must designate for protection
9 only those parts of material, documents, items, or oral or written communications that
10 qualify so that other portions of the material, documents, items, or communications for
11 which protection is not warranted are not swept unjustifiably within the ambit of this
12 Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that
14 are shown to be clearly unjustified or that have been made for an improper purpose
(e.g., to unnecessarily encumber the case development process or to impose unnecessary
15 expenses and burdens on other parties) may expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the inapplicable designation.

19 20 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this
21 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
22 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
23 must be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 26 27 28 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial
proceedings), that the Producing Party affix, at a minimum, the legend
“CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that

1 contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents available for inspection need
5 not designate them for protection until after the inspecting Party has indicated which
6 documents it would like copied and produced. During the inspection and before the
7 designation, all of the material made available for inspection shall be deemed
8 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
9 copied and produced, the Producing Party must determine which documents, or portions
10 thereof, qualify for protection under this Order. Then, before producing the specified
11 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
12 that contains Protected Material. If only a portion or portions of the material on a page
13 qualifies for protection, the Producing Party also must clearly identify the protected
14 portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party identify
16 the Disclosure or Discovery Material on the record, before the close of the deposition.

17 (c) for information produced in some form other than documentary and for
18 any other tangible items, that the Producing Party affix in a prominent place on the
19 exterior of the container or containers in which the information is stored the legend
20 “CONFIDENTIAL.” If only a portion or portions of the information warrants
21 protection, the Producing Party, to the extent practicable, shall identify the protected
22 portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material. Upon
26 timely correction of a designation, the Receiving Party must make reasonable efforts to
27 assure that the material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's Scheduling
4 Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1, et seq. Any discovery motion must strictly
7 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

8 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
9 be on the Designating Party. Frivolous challenges, and those made for an improper
10 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
11 may expose the Challenging Party to sanctions. Unless the Designating Party has
12 waived or withdrawn the confidentiality designation, all parties shall continue to afford
13 the material in question the level of protection to which it is entitled under the
14 Producing Party's designation until the Court rules on the challenge.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this Action
19 only for prosecuting, defending, or attempting to settle this Action. Such Protected
20 Material may be disclosed only to the categories of persons and under the conditions
21 described in this Order. When the Action has been terminated, a Receiving Party must
22 comply with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
27 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
28 may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this Protective Order. Such notification shall include a copy of this
11 Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
21 directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
24 IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
27 by Non-Parties in connection with this litigation is protected by the remedies and relief
28 provided by this Order. Nothing in these provisions should be construed as prohibiting

1 a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a
3 Non-Party's confidential information in its possession, and the Party is subject to an
4 agreement with the Non-Party not to produce the Non-Party's confidential information,
5 then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement with a
8 Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this Action, the relevant discovery request(s), and a reasonably
11 specific description of the information requested; and

12 (3) make the information requested available for inspection by the Non-
13 Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this Court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may
16 produce the Non-Party's confidential information responsive to the discovery request.
17 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
18 any information in its possession or control that is subject to the confidentiality
19 agreement with the Non-Party before a determination by the Court. Absent a court
20 order to the contrary, the Non-Party shall bear the burden and expense of seeking
21 protection in this Court of its Protected Material.

22

23 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
3 that is attached hereto as Exhibit A.

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5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection, the
9 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
13 parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted to
16 the Court.

17

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order, no Party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in this
24 Stipulated Protective Order. Similarly, no Party waives any right to object on any
25 ground to use in evidence of any of the material covered by this Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the specific

1 Protected Material at issue; good cause must be shown in the request to file under seal.
2 If a Party's request to file Protected Material under seal is denied by the Court, then the
3 Receiving Party may file the information in the public record unless otherwise
4 instructed by the Court.

5

6 13. FINAL DISPOSITION

7 After the final disposition of this Action, within 60 days of a written request by
8 the Designating Party, each Receiving Party must return all Protected Material to the
9 Producing Party or destroy such material. As used in this subdivision, "all Protected
10 Material" includes all copies, abstracts, compilations, summaries, and any other format
11 reproducing or capturing any of the Protected Material. Whether the Protected Material
12 is returned or destroyed, the Receiving Party must submit a written certification to the
13 Producing Party (and, if not the same person or entity, to the Designating Party) by the
14 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
15 Material that was returned or destroyed, and (2) affirms that the Receiving Party has not
16 retained any copies, abstracts, compilations, summaries or any other format reproducing
17 or capturing any of the Protected Material. Notwithstanding this provision, counsel are
18 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
19 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
20 expert reports, attorney work product, and consultant and expert work product, even if
21 such materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4 (DURATION).

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14. **VIOLATION OF ORDER**

2 Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5
6 DATED: June 27, 2024

Conlogue Law, LLP

7 */s/ Ashley M Conlogue*
8 Attorneys for Plaintiff
9 Ashley M Conlogue, Esq.

10
11 DATED: June 27, 2024

12 Office of the Los Angeles City Attorney
13 HYEDEE FELDSTEIN SOTO, City Attorney

14 *Christina P. Schmidt*
15 Attorneys for Defendant
16 CHRISTINA P. SCHMIDT,
17 Deputy City Attorney

18
19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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21
22 DATED: June 28, 2024

23
24 Honorable Brianna Fuller Mircheff
25 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Joseph Bayardo, Jr., et al. v. City of Los Angeles, et al.*, USDC Case No. CV23-09366-MEMF-BFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where signed:

Printed name:

Signature: